

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL  
MOSCHETTE,

Defendants.

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**DEFENDANTS' PRE-TRIAL STATEMENT**

The Defendants, David Steed and Michael Moschette, by their undersigned counsel, hereby submit their Pre-Trial Statement as follows:

(a) **A BRIEF GENERAL STATEMENT OF THE CASE.**

The Plaintiff is suing Officer David Steed and Lt. Michael Moschette for excessive force upon arrest and 42 U.S.C. §1983.

The Plaintiff is also suing Officer David Steed for violating his First Amendment rights by retaliation.

(b) **FACTS TO BE OFFERED.**

On January 26, 2012 at 12:46 a.m. in the City of Delray Beach, Palm Beach County, Florida, the Plaintiff, Mr. Evans, was seen to be walking in the area of the BP Gas Station located at 725 West Atlantic Avenue. The Plaintiff was known to have two active probable cause affidavits for his arrests charging him with two counts of sale of cocaine within 1000 feet of a church. Lt. Michael Moschette, Sgt. Brian Griffith and Officer David Steed were on scene. Officer David Steed approached the Plaintiff and told him that he was under arrest for the sale of

cocaine. The Plaintiff immediately began to back away from Officer Steed and jerked his arm out of Officer Steed's grasp. Officer Steed yelled at the Plaintiff to stop resisting and again the Plaintiff jerked out of Officer Steed's grasp. Officer Steed then applied an arm bar defensive tactics technique and took him to the ground. As the Plaintiff landed on the ground, he placed his arms under his body and continued to disregard Officer Steed's commands to place his hands behind his back and the Plaintiff began to violently kick his feet and legs and arch his back.

The Plaintiff was then able to reach for his right front pants pocket with his right hand, that had a Krazy glue container with a red cap inside of a cigarette pack. He began to manipulate the cigarette pack and pulled the red cap from the Krazy glue container with his right hand. The contents of the Krazy glue container spilled onto the ground. Officer Steed, who was concerned for his safety as well as preventing the destruction of evidence by the Plaintiff trying to eat the Krazy glue container contents, placed his forearm over the Plaintiff's head. During the struggle, the officers were able to get the Plaintiff's right wrist placed in handcuffs. Officer Steed, Lt. Moschette and Officer Griffith continued to give the Plaintiff verbal commands to stop resisting. However, he continued to resist violently.

In an attempt to gain compliance from the Plaintiff, Lt. Moschette sprayed the Plaintiff with his department issued pepper spray. The pepper spray had no effect on the Plaintiff. The Plaintiff continued in his attempts to overpower the officers by kicking his feet and bridging his back. During the struggle, Lt. Moschette was able to grab the Plaintiff's left arm, pull it behind his back and handcuff his left wrist.

Once in handcuffs, the Plaintiff still would not follow commands and continually tried to pull away from the officers. The officers had to physically pick up the Plaintiff and put him into the patrol vehicle.

The Plaintiff was then transported to the Delray Beach Police Department's temporary holding facility, where he complained of injuries. The Delray Beach Fire Rescue responded, and then attended to the Plaintiff and transported the Plaintiff to Bethesda Hospital where he was medically cleared by a doctor. The Plaintiff was transported to the Palm Beach County Jail, where he was booked and admitted. It should be noted that Officer Steed sustained injuries to his right wrist and knees.

The Plaintiff was later convicted of the underlying charges for arrest (two counts of sale of cocaine) as well as for possession of cocaine that was discovered on the Plaintiff during his arrest.

The Plaintiff filed two excessive force complaints against Officer Steed, one from alleged incident on September 13, 2010 and one on March 15, 2011. Officer Steed was exonerated on the allegations from the September 13, 2010 Internal Affairs investigation. The Internal Affairs case from March 15, 2011 was unfounded.

(c) **DEFENDANTS' EXHIBITS TO BE OFFERED AS EVIDENCE AT TRIAL.**

1. All exhibits listed by the Plaintiff.
2. The deposition of the Plaintiff Anthony Evans.
3. Certified copies of convictions from the January 26, 2012 arrest.
4. Certified copies of convictions for all of the Plaintiff's felony convictions and misdemeanors involving moral turpitude.
5. Certified copies of convictions of trespass after warning of 725 West Atlantic Avenue, BP Gas Station.
6. Delray Beach Police Department response to resistance form for the January 26, 2012 incident.
7. Delray Beach Police Department Arrestee/Detainee Jail Log.
8. Delray Beach Police Department Arrestee Observation Log.

9. Delray Beach Fire Department Run Report.
10. Delray Beach Fire Department Preliminary Incident Report.
11. Palm Beach County Sheriff's Office Certified Booking Card.
12. Internal Affairs 10-008 Final Resolution Form.
13. Internal Affairs 11-003 Final Resolution Form.
14. Petition for Injunction for protection against Officer Steed and Order Denying Petition.
15. David Steed Training and Performance Records regarding Defensive Tactics.
16. Michael Moschette Training and Performance Records regarding Defensive Tactics.
17. Delray Beach Police Department General Order 915.
18. Delray Beach Police Department General Order 2120.
19. Palm Beach County Sheriff's Office Operating Procedure 914.02.
20. List of Delray Beach Police Department officers who arrested Mr. Evans.
21. Officer Steed Internal Affairs and Final Disposition Log.
22. Lt. Moschette Internal Affairs and Final Disposition Log.
23. Internal Affairs and Final Disposition Log of any complaints filed by Anthony Evans against Officers of the Delray Beach Police Department.
24. Bethesda Memorial Hospital Records of Anthony Evans from January 26, 2012 arrest.
25. Palm Beach County Sheriff's Office Inmate medical records of Anthony Evans.
26. Delray Beach Police Department Reports for Case 12-1148 involving the Plaintiff, Anthony Evans, on January 26, 2012.
27. Delray Beach Police Department Reports for Cases 11-24727 and 12-346 which were the basis for the arrest on January 26, 2012.

28. Palm Beach County Sheriff's Office, Dept. of Corrections  
Injured Subject Booking Sheet dated January 26, 2012.

(d) **LIST OF ALL DEFENDANTS' NON-INMATE WITNESSES**

1. Officer David Steed  
Delray Beach Police Department  
300 West Atlantic Avenue  
Delray Beach, FL  
Officer who was present at the scene who will testify to the incident  
Described in Section B above.
2. Lt. Michael Moschette  
Delray Beach Police Department  
300 West Atlantic Avenue  
Delray Beach, FL  
Officer who was present at the scene who will testify to the incident  
Described in Section B above.
3. Sgt. Brian Griffith  
Delray Beach Police Department  
300 West Atlantic Avenue  
Delray Beach, FL  
Officer who was present at the scene who will testify to the incident  
Described in Section B above.
4. Chief Anthony Strianese  
Delray Beach Police Department  
300 West Atlantic Avenue  
Delray Beach, FL  
Chief of Police who will testify as to policy and procedure of the  
Delray Beach Police Department.
5. Sgt. Patrice Quinn  
Palm Beach County Sheriff's Office  
3228 Gun Club Road  
West Palm Beach, FL  
Who will testify as to policy and procedure of the  
Palm Beach County Sheriff's Office.
6. Keith Meyerson  
Delray Beach Fire Department  
501 West Atlantic Avenue  
Delray Beach, FL  
Paramedic who treated the Plaintiff at the

Delray Beach Police Department holding cell and transported him to Bethesda Hospital.

7. Brianna Barret, M.D.  
Bethesda Memorial Hospital  
2815 Seacrest Blvd.  
Boynton Beach, FL  
Who performed the physical examination and medically cleared the Plaintiff at the Hospital on January 26, 2012.
8. Lane A. Deyoe, M.D.  
Bethesda Memorial Hospital  
2815 Seacrest Blvd.  
Boynton Beach, FL  
Who performed the physical examination and medically cleared the Plaintiff at the hospital on January 26, 2012.
9. Maged S. Habib, M.D.  
Boynton Eye Institute  
2300 S. Congress Avenue, Suite 102  
Boynton Beach, FL 33426  
Who performed the eye examination of the Plaintiff on February 23, 2012.
10. Custodian of Records  
Delray Beach Police Department  
300 West Atlantic Avenue  
Delray Beach, FL 33444
11. Custodian of Records  
Delray Beach Fire Department  
501 West Atlantic Avenue  
Delray Beach, FL, 33444
12. Custodian of Records  
Palm Beach County Sheriff's Office  
3228 Gun Club Road  
West Palm Beach, FL
13. Custodian of Records  
Bethesda Memorial Hospital  
2815 Seacrest Blvd.  
Boynton Beach, FL
14. Jose E. Blandon, M.D.  
Palm Beach County Sheriff's Office  
3228 Gun Club Road

West Palm Beach, FL  
Who physically examined the Plaintiff while incarcerated.

15. G. Beauzile, M.D.  
Palm Beach County Sheriff's Office  
3228 Gun Club Road  
West Palm Beach, FL  
Who physically examined the Plaintiff while incarcerated

(e) **LIST OF INCARCERATED INMATE WITNESSES.**

None.

(f) **SUMMARY OF TESTIMONY OF EACH DEFENDANTS' WITNESS.**

See (d) above.

Respectfully submitted this 5<sup>th</sup> day of June, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol  
Catherine M. Kozol, Esq. (831433)  
Attorney email: [kozol@mydelraybeach.com](mailto:kozol@mydelraybeach.com)  
Asst. City Attorney/Police Legal Advisor  
300 W. Atlantic Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7823  
Facsimile: 561-243-7815  
and  
Terrill C. Pyburn, Esq. (524646)  
Attorney email: [pyburn@mydelraybeach.com](mailto:pyburn@mydelraybeach.com)  
Assistant City Attorney  
200 N. W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7090  
Facsimile: 561-278-4755

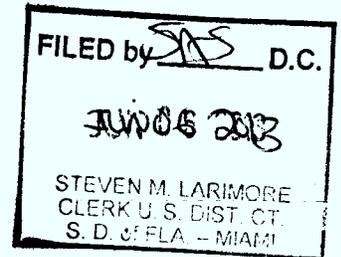
Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: Anthony George Evans, 187491, Lawtey

Correctional Institution, B21225, 7819 N.W. 228 Street, Raiford, FL 32026 on this 5<sup>th</sup> day of  
June, 2013.

/s/ Catherine M. Kozol  
Catherine M. Kozol, Esq.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
CASE NO. 12:80648-CIV-MARRA  
MAGISTRATE JUDGE P.A. WHITE



ATHONY GEORGE EVANS,  
Plaintiff,

Vs

DAVID STEED, et. al.  
Defendants.

---

**PLAINTIFF'S ANSWER TO DEFENDANT'S RESPONSE TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, **ATHONY GEORGE EVANS**, answers the Defendant's

Response to the Plaintiff's Motion for Summary Judgment and says:

1. Plaintiff is legally untrained prisoner in the state prison system.
2. Access to the law library for researching procedure and factual issues in his case are severely limited.
3. Access to the library limitations made it difficult for the plaintiff to comply with the statutory and court ordered time limitations. Rule 26 (a)(2)C) provides for discovery in the interests of justice. The Rule states, *"On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other*

*source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.”*

4. Plaintiff requests that the court allow the Plaintiff's Motion, affidavits filed in support thereof, and requests for admissions to be answered as the answers will encourage judicial economy in the matter and contribute to the effective use of court resources.

5. There is no prejudice to the defendants by requiring their response to the requested admissions.

6. Plaintiff has attested to all documents required to be sworn to in accord with 28 U.S.C. 1746.<sup>1</sup> The sufficiency of such attestation has been recognized by all federal courts.<sup>2</sup>

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<sup>1</sup> 28 U.S.C.A. § 1746

UNITED STATES CODE ANNOTATED  
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE  
PART V. PROCEDURE

CHAPTER 115. EVIDENCE; DOCUMENTARY

Current through P.L. 112-207 approved 12-7-12

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

7. The Plaintiff has filed sufficient documents establishing that there are no material fact questions and that the plaintiff is entitled to summary judgment as a matter of law.

Wherefore, Plaintiff request that the Court grant Plaintiff's Motion for Summary judgment and deny the motion filed by the Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to

, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street, Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol, Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray

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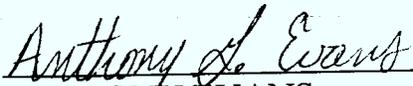
(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

<sup>2</sup> See **Bartholomew vs Blevins** 679 F.3d 497 ((S Ct of app, 6th Circ. 2012) in which the court stated, "*Notarial functions and methods have evolved over time, becoming more ministerial and less formal. See Closen & Dixon, Notaries, 68 N.D. L.Rev. at 875-78 & n.15 (tracing development of notarial functions from the multi-purpose, legal-adviser role in ancient Rome to the modern role of administering oaths and witnessing the execution of important documents); see generally Unif. Law on Notarial Acts § 2(5) (2010) (identifying notarial acts). Perhaps evocative of this trend, Congress has seen fit to eliminate the need for notarial attestation in certain circumstances, such as when it enacted 28 U.S.C. § 1746 allowing the use of unsworn declarations in federal judicial proceedings*" and **Pretka vs Kolter City Plaza II, Inc.**, 608 F.3d 744, 22 Fla. L. Weekly Fed. C 949 (US Ct of App, 11th Circ. 2010) in which the court stated, "*A sworn declaration is legally the same as an affidavit. See 28 U.S.C. § 1746.*"

Beach, Florida 33344 and the Clerk of the Court, United States District Court for  
the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami,  
Florida 33128 this 31 day of May, 2013.

  
\_\_\_\_\_  
ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

LEGAL MAIL  
PROVIDED TO LAWTEY C.I.  
DATE 5/31/13 FOR MAILING.  
INMATE INITIALS AE

FILED by *[Signature]* D.C.  
JUN 11 2013  
STEVEN M. LAWMORE  
CLERK U. S. DIST. CT.  
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
CASE NO. 12:80648-CIV-MARRA  
MAGISTRATE JUDGE P.A. WHITE

ATHONY GEORGE EVANS,  
Plaintiff,

LEGAL MAIL  
PROVIDED TO LAWTEY C.I.  
DATE 6/3/13 FOR MAILING  
INMATE INITIALS AE

Vs

DAVID STEED, et. al.  
Defendants.

PLAINTIFF'S AMENDED ANSWER TO DEFENDANT'S RESPONSE TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, **ATHONY GEORGE EVANS**, answers the Defendant's  
Response to the Plaintiff's Motion for Summary Judgment and says:

1. Plaintiff is legally untrained prisoner in the state prison system.
2. Access to the law library for researching procedure and factual issues in his case are severely limited.
3. Access to the library limitations made it difficult for the plaintiff to comply with the statutory and court ordered time limitations. Rule 26 (a)(2)C) provides for discovery in the interests of justice. The Rule states, *"On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other*

*source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues."*

4. Plaintiff requests that the court allow the Plaintiff's Motion, affidavits filed in support thereof, and requests for admissions to be answered as the answers will encourage judicial economy in the matter and contribute to the effective use of court resources.

5. There is no prejudice to the defendants by requiring their response to the requested admissions.

6. Plaintiff has attested to all documents required to be sworn to in accord with 28 U.S.C. 1746.<sup>1</sup> The sufficiency of such attestation has been recognized by all

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<sup>1</sup> 28 U.S.C.A. § 1746  
UNITED STATES CODE ANNOTATED  
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE  
PART V. PROCEDURE  
CHAPTER 115. EVIDENCE; DOCUMENTARY  
Current through P.L. 112-207 approved 12-7-12  
§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

federal courts.<sup>2</sup> The complaint bears the necessary certification on page 5 and states ***“I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.”*** See 28 USC 1746.

7. The Plaintiff has filed sufficient documents establishing that there are no material fact questions and that the plaintiff is entitled to summary judgment as a matter of law.

Wherefore, Plaintiff request that the Court grant Plaintiff’s Motion for Summary judgment and deny the motion filed by the Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to

T. Coyle, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street, Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol, Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray

---

<sup>2</sup> See Bartholomew vs Blevins 679 F.3d 497 ((S Ct of app, 6th Circ. 2012) in which the court stated, *“Notarial functions and methods have evolved over time, becoming more ministerial and less formal. See Closen & Dixon, Notaries, 68 N.D. L.Rev. at 875-78 & n.15 (tracing development of notarial functions from the multi-purpose, legal-adviser role in ancient Rome to the modern role of administering oaths and witnessing the execution of important documents); see generally Unif. Law on Notarial Acts § 2(5) (2010) (identifying notarial acts). Perhaps evocative of this trend, Congress has seen fit to eliminate the need for notarial attestation in certain circumstances, such as when it enacted 28 U.S.C. § 1746 allowing the use of unsworn declarations in federal judicial proceedings”* and Pretka vs Kolter City Plaza II, Inc., 608 F.3d 744, 22 Fla. L. Weekly Fed. C 949 (US Ct of App, 11th Circ. 2010) in which the court stated, *“A sworn declaration is legally the same as an affidavit. See 28 U.S.C. § 1746.”*

Beach, Florida 33344 and the Clerk of the Court, United States District Court for  
the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami,  
Florida 33128 this 3<sup>RD</sup> day of JUNE 2013.

Anthony Evans 187491

ANTHONY EVANS

DC# 187491

Lawtey CI

7819 NW 228th Street

Raiford, Florida 32026

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL  
MOSCHETTE,

Defendants.

---

**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE  
IN OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW, the Defendants, David Steed and Michael Moschette, and files this, their reply to the Plaintiff's Response in Opposition to the Defendants' Motion for Summary judgment as follows:

1. The Plaintiff has not listed any cases showing that the law was clearly established to inform Officer Steed that he could not use the force he did to effectuate the arrest of the Plaintiff, a felon, to protect himself and others in the area and prevent the destruction of evidence. The Defendants discussed the objectively reasonable uses of force at length in their Motion for Summary Judgment.

2. Further, the Plaintiff failed to allege any cases wherein Lt. Moschette had a clearly established duty to intervene from the uncontested facts especially in the tumultuous situation where Lt. Moschette could not anticipate what Officer Steed was going to do, as well as having to protect himself and others in the area and prevent the destruction of evidence.

3. While the Plaintiff attached photos of himself in his Response,<sup>1</sup> the Plaintiff fails to mention that he was examined and medically cleared by the Doctor at Bethesda Hospital who found no concussions and only abrasions and transported to the Palm Beach County Jail. See Evans Deposition, p. 55 and Exhibit C, Sgt. Brian Griffith Affidavit in the Defendants' Motion for Summary Judgment.

4. The Recommendation from Magistrate Judge White stated that the "Plaintiff claims Officer Steed used excessive force against him due to a prior filing of a grievance against him."<sup>2</sup> As discussed above, since there was no excessive force as the force used was objectively reasonable, as well as their being probable cause for arrest, there was no retaliation. Further, as discussed in the Defendants' Motion for Summary Judgment, Officer Steed was exonerated and unfounded in the Internal Affairs Investigations as to the complaints filed against him by the Plaintiff. Therefore, because of the above, a causal connection has not been established between Officer Steed's actions and the adverse effect on speech by the Plaintiff and the Count should be dismissed.

WHEREFORE, the Defendants request this honorable Court to grant the Defendants' Motion for Summary Judgment.

DATED this 14<sup>th</sup> day of June, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol  
Catherine M. Kozol, Esq. (831433)  
Attorney email: [kozol@mydelraybeach.com](mailto:kozol@mydelraybeach.com)  
Asst. City Attorney/Police Legal Advisor

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<sup>1</sup> The photos should be stricken as it is unknown and unverified when and where they were taken and they have not been properly authenticated.

<sup>2</sup> The Order signed by Judge Marra adopted the Recommendations by Magistrate Judge White.

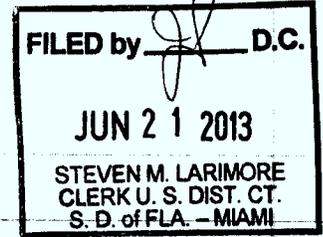
300 W. Atlantic Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7823  
Facsimile: 561-243-7815  
and  
Terrill C. Pyburn, Esq. (524646)  
Attorney email: [pyburn@mydelraybeach.com](mailto:pyburn@mydelraybeach.com)  
Assistant City Attorney  
200 N. W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7090  
Facsimile: 561-278-4755

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: Anthony George Evans, 187491, Lawtey Correctional Institution, B21225, 7819 N.W. 228 Street, Raiford, FL 32026 on this 14<sup>th</sup> day of June, 2013.

/s/ Catherine M. Kozol  
Catherine M. Kozol, Esq.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
CASE NO. 12:80648-CIV-MARRA  
MAGISTRATE JUDGE P.A. WHITE**



ANTHONY GEORGE EVANS,  
Plaintiff,

Vs

DAVID STEED, et. al.  
Defendants.

---

**PLAINTIFF'S NOTICE OF SUPPLEMENTARY ADDITIONAL  
WITNESS AND EVIDENCE BASED UPON DEFENDANT'S  
COMPLIANCE WITH PRE-TRIAL DISCLOSURE**

Comes Now Plaintiff, **ANTHONY GEORGE EVANS**, in the above-entitled action and gives notice of the following additional witnesses and evidence.

Plaintiff, in addition to the witnesses and evidence already disclosed gives notice:

1. Plaintiff will present any or all of the witnesses listed by the defense.
2. Plaintiff gives notice of introducing into evidence any and all of the document and exhibits, and physical and demonstrative evidence identified by the defense.
3. Plaintiff reaffirms all witnesses and evidence previously disclosed.

**WHEREFORE, the Plaintiff requests that the Court list all of these additional witnesses and evidence as disclosed for presentation in the plaintiff's case.**

**UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY**  
**PURSUANT TO 28 U.S.C.A. § 1746**

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed on June 17, 2013.

Anthony G. Evans  
ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

LEGAL MAIL  
PROVIDED TO LAWTEY C.I.  
DATE 6/17/13 FOR MAILING.  
INMATE INITIALS AE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to CCG, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street, Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol, Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray Beach, Florida 33344 and the Clerk of the Court, United States District Court for the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami, Florida 33128 this 17<sup>th</sup> day of June, 2013.

Anthony G. Evans  
ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL  
MOSCHETTE,

Defendants.

---

**DEFENDANTS' RESPONSE TO COURT'S ORDERS OF JUNE 21, 2013**

COMES NOW, the defendants David Steed and Michael Moschette, in response to the Court's orders of June 21, 2013, Docket Entries 48 and 50, and states as follows:

1. On March 27, 2013, the Defendants responded to the Plaintiff's Request to Produce. A copy of said Response is attached hereto as Exhibit A.
2. On May 15, 2013, the Defendants responded to the Plaintiff's Request for a copy of his deposition by providing him a copy of his deposition and attached exhibits. A copy of said Response is attached hereto as Exhibit B.

DATED this 26<sup>th</sup> day of June, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol  
Catherine M. Kozol, Esq. (831433)  
Attorney email: [kozol@mydelraybeach.com](mailto:kozol@mydelraybeach.com)  
Asst. City Attorney/Police Legal Advisor  
300 W. Atlantic Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7823

Facsimile: 561-243-7815  
and  
Terrill C. Pyburn, Esq. (524646)  
Attorney email: [pyburn@mydelraybeach.com](mailto:pyburn@mydelraybeach.com)  
Assistant City Attorney  
200 N. W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7090  
Facsimile: 561-278-4755

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: Anthony George Evans, 187491, Lawtey Correctional Institution, B21225, 7819 N.W. 228 Street, Raiford, FL 32026 on this 26<sup>th</sup> day of June, 2013.

/s/ Catherine M. Kozol  
Catherine M. Kozol, Esq.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL  
MOSCHETTE,

Defendants.

---

**DEFENDANTS' RESPONSE TO REQUEST FOR  
PRODUCTION OF DISCOVERY DOCUMENTS**

COMES NOW, the Defendants, David Steed and Michael Moschette, hereby respond to the Plaintiff's Request for Production of Discovery Documents pursuant to FRCP Rule 26:

1. All documents previously provided on September 10, 2012.
2. See attached Order for Protection dated February 28, 2011. This is the only Order for Protection in the possession of the defendants.
3. None.
4. This information was destroyed as previously advised in letter dated October 24, 2012. See attached copy of letter dated October 24, 2012.
5. Same as number 4 above.
6. This information was previously provided on October 24, 2012.
7. None.
8. This information is confidential and exempt as advised in letter of October 24, 2012.
9. See attached training performance results.

**EXHIBIT A**

10. See attached reports dated September 13, 2010 and January 26, 2012.
11. Same as number 10 above.
12. None.
13. See attached sheet.
14. See attached sheet.
15. None.
16. Destroyed per State destruction procedures.
17. General Order 2120 was provided on October 24, 2012. Request for 10.4, 10.5 and 10.10 Reports is unclear.
18. The Internal Affairs File has been previously provided.
19. No conventional insurance policy was in effect to cover any liability exposure.

The City of Delray Beach is self-insured and self-funds any liability losses. A self-insurance policy is in force to define coverages, exposures, exclusions, and to list persons and entities who are insured; but no insurance money is forthcoming - either from primary or excess insurance.

DATED this 27<sup>th</sup> day of March, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol  
Catherine M. Kozol, Esq. (831433)  
Attorney email: [kozol@mydelraybeach.com](mailto:kozol@mydelraybeach.com)  
Asst. City Attorney/Police Legal Advisor  
300 W. Atlantic Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7823  
Facsimile: 561-243-7815  
and  
Terrill C. Pyburn, Esq. (524646)  
Attorney email: [pyburn@mydelraybeach.com](mailto:pyburn@mydelraybeach.com)

Assistant City Attorney  
200 N. W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7090  
Facsimile: 561-278-4755

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: Anthony George Evans; Century Correctional Institution, 400 Tedder Road, Century, FL 32535 on this 27<sup>th</sup> day of March, 2013.

/s/ Catherine M. Kozol

Catherine M. Kozol, Esq.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL  
MOSCHETTE,

Defendants.

---

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION  
TO OBTAIN COPY OF DEPOSITION**

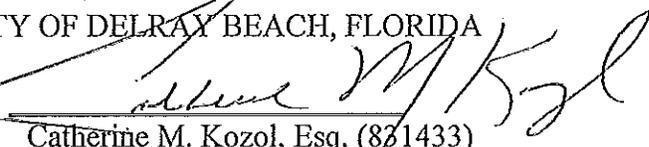
COMES NOW, the Defendants, David Steed and Michael Moschette, and files this, their response to the Plaintiff's Motion to Obtain Copy of Deposition.

In Response to the Plaintiff's Motion, Counsel for the Defendants has this date provided the Plaintiff with a copy of his deposition and Exhibits to the Deposition.

Respectfully submitted this 15<sup>th</sup> day of May, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DELRAY BEACH, FLORIDA

By: 

Catherine M. Kozol, Esq. (831433)

Attorney email: [kozol@mydelraybeach.com](mailto:kozol@mydelraybeach.com)

Asst. City Attorney/Police Legal Advisor

300 W. Atlantic Avenue

Delray Beach, FL 33444

Telephone: 561-243-7823

Facsimile: 561-243-7815 and

Terrill C. Pyburn, Esq. (524646)

Attorney email: [pyburn@mydelraybeach.com](mailto:pyburn@mydelraybeach.com)

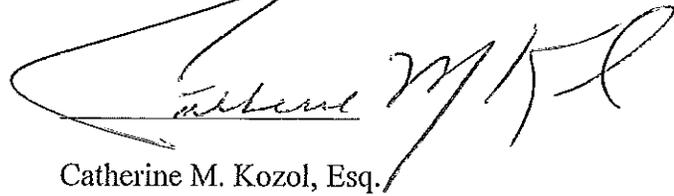
Assistant City Attorney

**EXHIBIT B**

200 N. W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7090  
Facsimile: 561-278-4755

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: Anthony George Evans, 187491, Lawtey Correctional Institution, B21225, 7819 N.W. 228 Street, Raiford, FL 32026 on this 15<sup>th</sup> day of May, 2013.

A handwritten signature in black ink, appearing to read 'Catherine M. Kozol', with a large, stylized flourish extending to the right.

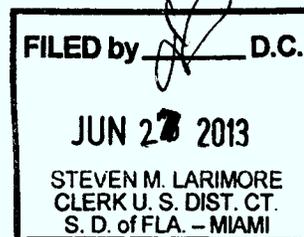
Catherine M. Kozol, Esq.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
CASE NO. 12:80648-CIV-MARRA  
MAGISTRATE JUDGE P.A. WHITE**

ATHONY GEORGE EVANS,  
Plaintiff,

Vs

DAVID STEED, et. al.  
Defendants.



**PLAINTIFF'S MOTION TO STRIKE PARAGRAPH 4 OF DEFENDANT'S  
REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, **ATHONY GEORGE EVANS**, moves this honorable court to strike paragraph 4 of Defendant's Reply to Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment and says:

1. Plaintiff is legally untrained prisoner in the state prison system.
2. Access to the law library for researching procedure and factual issues in his case are severely limited.
3. Defendant's have filed a reply referencing a recommendation from Magistrate Judge White regarding Officer Steed. Plaintiff has not received any recommended order from the magistrate judge in this matter. Because the honorable Magistrate judge has not responded, the reference is inaccurate and should be stricken.

Wherefore, Plaintiff request that the Court grant Plaintiff's Motion for Summary judgment and deny the motion filed by the Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to

, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street, Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol, Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray Beach, Florida 33344 and the Clerk of the Court, United States District Court for the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami,

Florida 33128 this 24<sup>th</sup> day of ~~May~~, 2013.  
JUNE, 2013

  
ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

LEGAL MAIL  
PROVIDED TO LAWTEY C.I.  
DATE 6/24/13 FOR MAILING.  
INMATE INITIALS AE

FILED by SP D.C.  
JUL 08 2013  
STEVEN M. LARIMORE  
CLERK U. S. DIST. CT.  
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
CASE NO. 12:80648-CIV-MARRA  
MAGISTRATE JUDGE P.A. WHITE

ATHONY GEORGE EVANS,  
Plaintiff,

Vs

DAVID STEED, et. al.  
Defendants.

LEGAL MAIL  
PROVIDED TO LAWTEY C.I.  
DATE 7-8 FOR MAILING.  
INMATE INITIALS AE  
7-1-13

PLAINTIFF'S SUPPLEMENTARY AUTHORITY

Plaintiff, **ATHONY GEORGE EVANS**, files this Supplementary Authority regarding the issue of failure to supervise the activities of subordinate officers.

1. In Keating vs City of Miami 598 F.3d 753, 22 Fla. L. Weekly Fed. C 565 (US Ct of App, 11th Circ, 2010) protestors brought § 1983 action against municipal defendants and individual police officers alleging violations of their First, Fourth, and Fourteenth Amendment rights, and also alleging state law tort claims arising out of events surrounding demonstrations during ministerial meetings regarding free trade. The defendants moved to dismiss. The United States District Court for the Southern District of Florida granted motions in part and denied them in part, and the defendants appealed. The Court of Appeals held that civil rights complaint filed by protestors sufficiently alleged facts demonstrating causal connection

between unlawful acts of individual police officers, in allegedly striking them with batons and discharging projectiles and tear gas, and actions of chief of police, deputy chief and captain in police department. The court stated,

***“Protestors' right to assemble, protest, and demonstrate peacefully on public property was clearly established at time when, purportedly acting on orders or at direction of police chief, deputy chief and captain in police department, officers had allegedly advanced in lines and employed non-lethal force to "herd" protestors away and completely eviscerate their ability to engage in such protected activity; accordingly, police chief, deputy and captain were not entitled to qualified immunity in civil rights complaint brought by protestors for violation of their First Amendment rights.”***

2. In **American Federation of Labor and congress of Industrial Organizations vs City of Miami** 637 F.3d 1178, 22 Fla. L. Weekly Fed. C 1949 (US Ct of App, 11th Circ 2012) Union and individual protestors filed § 1983 action alleging that city and its police officers violated their constitutional rights during protests, and seeking declaratory and injunctive relief. The United States District Court for the Southern District of Florida entered summary judgment in defendants' favor, and plaintiffs appealed. The Court of Appeals held that a municipality can also be held liable under § 1983 when its employees cause a constitutional injury as a result of the municipality's policy- or custom-based failure to adequately train or supervise its employees. The court relied upon **Gold v. City of Miami**, 151 F.3d 1346, 1350 (11th Cir.1998). The court stated, ***"the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to***

*deliberate indifference to the rights of persons with whom the police come into contact." In City of Canton, 489 U.S. at 388, 109 S.Ct. 1197 "To establish a municipality's "deliberate indifference," a plaintiff must put forward some evidence that the municipality was aware of the need to train or supervise its employees in a particular area. Gold, 151 F.3d at 1350-51."*

3. Plaintiff has submitted information concerning the numerous Internal Affairs (IA) investigations involving both officers involved in his excessive force case.

---

ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to

C. M. Kozol, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street,  
Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol,  
Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray  
Beach, Florida 33344 and the Clerk of the Court, United States District Court for  
the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami,  
Florida 33128 this 1<sup>st</sup> day of July, 2013.

Anthony J. Evans  
ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL  
MOSCHETTE,

Defendants.

---

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION  
TO STRIKE PARAGRAPH 4 OF DEFENDANTS' REPLY  
TO PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Defendants David Steed and Michael Moschette, and submits their response as follows:

1. Upon receipt of Mr. Evans complaint, U.S. Magistrate Patrick A. White issued a Report and Recommendations on June 27, 2012. (See DE #9). I have attached a copy of the Report and Recommendations as Exhibit A.

2. On July 24, 2012, Judge Kenneth A. Marra entered an Order Adopting Magistrate White's Report and Recommendations (See DE #12). I have also attached a copy of the Court's Order as Exhibit B.

3. On August 31, 2012, a copy of the Report and Recommendations was mailed to the Plaintiff at the Century Correctional Institution, Inmate Mail/Parcels, 400 Tedder Road, Century, FL 32535 (See DE Text #12).

4. It should be noted that the Plaintiff remained at the Century Correctional Institution through his deposition on March 14, 2013.). (See also attached Exhibit C, front page

of the deposition of the Plaintiff Anthony Evans.). The Plaintiff just recently submitted a change of address to another institution on April 11, 2013. (See DK Text #32.)

5. Therefore, paragraph 4 of the Plaintiff's Response in Opposition to the Defendant's Motion for Summary Judgment regarding the Report, Recommendations and Order is accurate and should not be stricken.

WHEREFORE, the Defendants request this Court to deny the Plaintiff's Motion to Strike Paragraph 4 of the Defendants' Reply to the Plaintiff's Response in Opposition to the Defendants' Motion for Summary Judgment.

Respectfully submitted this 12<sup>th</sup> day of July, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol  
Catherine M. Kozol, Esq. (831433)  
Attorney email: [kozol@mydelraybeach.com](mailto:kozol@mydelraybeach.com)  
Asst. City Attorney/Police Legal Advisor  
300 W. Atlantic Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7823  
Facsimile: 561-243-7815 and  
Terrill C. Pyburn, Esq. (524646)  
Attorney email: [pyburn@mydelraybeach.com](mailto:pyburn@mydelraybeach.com)  
Assistant City Attorney  
200 N. W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Telephone: 561-243-7090  
Facsimile: 561-278-4755

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: Anthony George Evans, 187491, Lawtey

Correctional Institution, B21225, 7819 N.W. 228 Street, Raiford, FL 32026 on this 12<sup>th</sup> day of July, 2013.

/s/ Catherine M. Kozol

Catherine M. Kozol, Esq.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.12-80648-CIV MARA  
MAGISTRATE JUDGE P. A. WHITE

ANTHONY GEORGE EVANS,

Plaintiff,

v.

DAVID STEED, et al.,

Defendants.

:  
:  
:  
:  
:

REPORT OF  
MAGISTRATE JUDGE

I. Introduction

The plaintiff Anthony George Evans, housed at the West Palm Beach Detention Center, has filed a pro se complaint pursuant to 42 U.S.C. §1983 for damages. [DE# 1]. The plaintiff has been granted leave to proceed in forma pauperis.

This cause is presently before the Court for initial screening pursuant to 28 U.S.C. §1915, because the plaintiff is proceeding in forma pauperis.

II. Analysis

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

\* \* \*

EXHIBIT A

(e) (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

\* \* \*

(B) the action or appeal -

\* \* \*

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief from a defendant who is immune from such relief.

A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997) ("The language of section 1915(e) (2) (B) (ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order

to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1979) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997). The complaint may be dismissed if the plaintiff does not plead facts that do not state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007) (retiring the oft-criticized "no set of facts" language previously used to describe the motion to dismiss standard and determining that because plaintiffs had "not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed" for failure to state a claim); Watts v. FIU, 495 F.3d 1289 (11 Cir. 2007). While a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 127 S.Ct. at 1964-65. The rules of pleading do "not require heightened fact pleading of specifics . . . ." The Court's inquiry at this stage focuses on whether the challenged pleadings "give the defendant fair notice of

what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (quoting Twombly, 127 S.Ct. at 1964).

Facts of the complaint

The plaintiff contends that Delray Beach Police Officers David Steed, in retaliation for his filing a grievance against him, and Michael Moschette used excessive force upon his arrest, using an alleged affidavit. He contends that on January 26, 2012, he was exiting his yard and he was cut off by Steed's Patrol car. Steed proceeded to slam his right shoulder and kick him in his right rib cage. Once on the ground Steed straddled him and began to punch his head and face, and tried to force a metal baton into his mouth. He banged his head on the ground causing a concussion. Supervisor Moschette did not intervene, but on the contrary took part in the assault by emptying a can of pepper spray into his eyes. He was denied medical aid by Steed. He claims Steed and Griffith planted drugs on him and took him to the station.

He was later taken to the hospital for a concussion, lower back, neck, and rib pain, and a swollen right eye with severe headaches. He suffered a scratched cornea and cataract, for which he requires surgery. He was given prescription glasses and taken to the Palm Beach County Jail.

Sufficiency of the complaint

Evans is alleging that Officers David Steed and Michael Moschette used excessive force during a seizure in violation of his Fourth Amendment rights.

Claims of excessive force by police officers are cognizable under 42 U.S.C. §1983, as are claims that officers who were present failed to intervene. Fundiller v. City of Cooper City, 777 F.2d 1436 (11 Cir. 1985). A claim that a law enforcement officer used excessive force in the course of an arrest, an investigatory stop, or any other seizure of a free citizen is to be analyzed under the Fourth Amendment and its "reasonableness" standard. Graham v. Connor, 490 U.S. 386 (1989) ("all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard"); Ortega v. Schram, 922 F.2d 684, 694 (11 Cir. 1991).

At this preliminary stage the facts presented by the plaintiff support a claim of use of unlawful force. This claim should be permitted to proceed against the defendants.

#### Unlawful Search and Seizure

The plaintiff further argues that the officers violated his Fourth Amendment rights by stopping him with an "alleged warrant". As stated by the Eleventh Circuit in U.S. v. Alexander, 835 F.2d 1406, 1408 (11 Cir. 1988), the basic premise of the search doctrine is that "searches undertaken without a warrant issued upon probable cause are 'per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). In this case, the plaintiff states the officers possessed a warrant and unless the plaintiff can substantiate his claim that it was "alleged", this claim should be dismissed.

### Retaliation

Under certain circumstances, retaliation may violate the inmate's First Amendment rights. Wright v. Newsome, 795 F.2d 964, 968 (11 Cir. 1986). In the "free world" context, an act taken in retaliation for exercise of a constitutionally protected right is actionable under §1983 even if the act, when taken for different reasons, would have been proper. Mount Healthy City School Dist. Bd. of Education v. Doyle, 429 U.S. 274, 283 (1977)).

The analysis applied in this Circuit to a prisoner retaliation claim requires a "mutual accommodation" between the penal institution's legitimate needs and goals and the prisoner's retained constitutional rights, under the "reasonableness" test set forth in Turner v. Safley, 482 U.S. 78 (1987).

The plaintiff claims Officer Steed used excessive force against him due to a prior filing of a grievance against him. The plaintiff has stated a claim for retaliation against Steed at this preliminary stage.

### III. Recommendation

Based on the foregoing, it is recommended as follows:

1. The claim against Steed and Moschette for use of excessive force upon arrest shall continue.
2. The claim against Steed for retaliation should proceed.

Case 9:12-cv-80648-KAM Document 9 Entered on FLSD Docket 06/27/2012 Page 7 of 7

3. The claim of unlawful search and seizure should be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted, unless the plaintiff can amend his complaint to substantiate his claim of an "alleged warrant" and/or lack of probable cause.

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

It is so recommended at Miami, Florida, this 27<sup>th</sup> day of June, 2012.



UNITED STATES MAGISTRATE JUDGE

cc: Anthony G. Evans, Pro Se  
#0111396  
Palm Beach County Jail  
Address of record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-80648-CIV-MARRA

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED, et al.,

Defendants.

---

ORDER

\_\_\_\_\_ For the reasons stated in the Report of the Magistrate Judge and upon independent de novo review of the file and over no objections filed, it is **ORDERED AND ADJUDGED** as follows:

- 1) The Report and Recommendation of the Magistrate Judge is adopted and approved in all respects.
- 2) The claim against Steed and Moschette for use of excessive force upon arrest shall proceed. The claim against Steed for retaliation shall proceed. The claim of unlawful search and seizure should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted, unless the plaintiff can amend his complaint to substantiate his claim of an

EXHIBIT B

Case 9:12-cv-80648-KAM Document 12 Entered on FLSD Docket 07/24/2012 Page 2 of 2

“alleged warrant” and/or lack of probable cause. Plaintiff shall have twenty (20) days from the date of entry of this order to file an amended complaint.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 24<sup>th</sup> day of July, 2012.

  
\_\_\_\_\_  
KENNETH A. MARRA  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

CASE NO.: 9:12-cv-80648-KAM

DAVID STEED and MICHAEL  
MOSCHETTE,

Defendants.

DEPOSITION OF ANTHONY G. EVANS

Taken on Behalf of the Defendant

**DATE TAKEN:** Thursday, March 14, 2013  
**TIME:** 10:16 a.m. - 11:36 a.m.  
**PLACE:** Century Correctional Institution  
400 Tedder Road  
Century, Florida 32535

Examination of the Witness reported by:

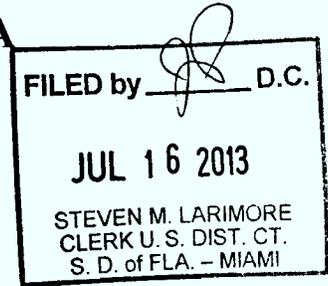
Kimberly Rodgers, Florida Professional Reporter  
Notary Public, State of Florida

**ANCHOR COURT REPORTING**  
229 South Baylen Street  
Pensacola, Florida 32502

**ORIGINAL**

**EXHIBIT C**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
CASE NO. 12:80648-CIV-MARRA  
MAGISTRATE JUDGE P.A. WHITE**



ATHONY GEORGE EVANS,  
Plaintiff,

Vs

DAVID STEED, et. al.  
Defendants.

---

**PLAINTIFF'S NOTICE OF FILING IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff, **ATHONY GEORGE EVANS**, files this Notice of Filing  
Supplementary Authority regarding the issue of Officer DAVID STEED's  
previous discipline as follows:

**Attached Computer docket print-out dated 3/20/2012 pertaining  
to DAVID STEED as "Exhibit 1" consisting of 18 dated incidents  
of sanctioned conduct from October 16th, 2006 to January 30th,  
2012.**

Plaintiff has submitted information concerning the numerous Internal Affairs (IA)  
investigations involving both officers involved in his excessive force case.

*Anthony Evans*  
ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to

K. Jackson, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street,  
Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol,  
Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray  
Beach, Florida 33344 and the Clerk of the Court, United States District Court for  
the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami,  
Florida 33128 this 10<sup>th</sup> day of July, 2013.

Anthony Evans  
ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

LEGAL MAIL  
PROVIDED TO LAWTEY C.I.  
DATE 7/10/13 FOR MAILING.  
INITIALS AE

Investigations By Employee

Report Date: 03/20/2012

Page: 1

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
944	STEED, DAVID (CIV) Type: ADM Desc: COURT FTA Statute: Dispo: E Date: 11/20/2008 Action:NONE Final Dispo: EXONERATED	SR08084	10/16/2006	09/29/2008
			Rule/Reg: RR25 Charge:	-1
944	STEED, DAVID (CIV) Type: Desc: VEHICLE INSPECTION Statute: Dispo: E Date: 07/08/2007 Action:NONE Final Dispo: EXONERATED	SR07005	01/24/2007	01/21/2007
			Rule/Reg: RR1 Charge:	-2
944	STEED, DAVID (PTL) Type: ADM Desc: REPORT FAIL SUBMIT Statute: Dispo: S Date: 06/25/2007 Action:TRAINING Final Dispo: TRAINING	SR07046	05/16/2007	05/15/2007
			Rule/Reg: RR1 Charge:	-3
944	STEED, DAVID (CIV) Type: ADM Desc: ACCIDENT AT FAULT Statute: Dispo: S Date: 11/19/2009 Action:VRBL REP Final Dispo: VERBAL REPRIMAND	SR08081	10/09/2008	10/09/2008
			Rule/Reg: RR26 Charge:	-4
944	STEED, DAVID (CIV) Type: ADM Desc: COURT FTA Statute: Dispo: S Date: 11/24/2008 Action:LETTER REP Final Dispo: LETTER REPRIMAND	SR08085	10/16/2008	10/06/2008
			Rule/Reg: RR25 Charge:	-5
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #1 FAILURE TO REPORT Statute: Dispo: S Date: 05/01/2010 Action:WRITEN REP Final Dispo: SUSTAINED	SR09112B	12/29/2009	12/27/2009
			Rule/Reg: R & R #1 Charge:	-6
944	STEED, DAVID (PTL) Type: ADM Desc: FAILURE TO REPORT DAMAGE TO VEHICLE Statute: Dispo: N Date: 04/02/2010 Action:NONE Final Dispo: NOT SUSTAINED	SR10009	02/06/2010	02/02/2010
			Rule/Reg: R & R #1 Charge:	-7
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #23 CONDUCT TOWARDS PUBLIC Statute: Dispo: N Date: 08/11/2010 Action:NONE Final Dispo: NON- SUSTAINED	SR10045	06/22/2010	06/17/2010
			Rule/Reg: R & R #23 Charge:	-8

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Kathy  
7-14  
16, 17, 18  
narratives  
only

ATTACHMENT/EXHIBIT 1

Investigations By Employee

Report Date: 03/20/2012

Page: 2

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
944	STEED, DAVID (PTL)	IA10008	09/17/2010	09/13/2010
✓	Type: CIT Desc: R&R #5 EXCESSIVE FORCE Statute: Dispo: E Date: 01/24/2011 Action:NONE Final Dispo: EXONERATED		Rule/Reg: R & R #5 Charge:	
944	STEED, DAVID (PTL)	SR09112A	12/29/2010	12/27/2009
✓	Type: CIT Desc: R & R #1 IMPROPER RADIO PROCEDURE Statute: Dispo: S Date: 05/01/2010 Action:VERBAL REP. Final Dispo: SUSTAINED		Rule/Reg: R & R #1 Charge:	
944	STEED, DAVID (PTL)	SR11004A	01/18/2011	01/07/2011
/	Type: CIT Desc: R & R #4 ILLEGAL SEARCH Statute: Dispo: E Date: 03/15/2011 Action:NONE Final Dispo: EXONERATED		Rule/Reg: R&R #4 Charge:	
944	STEED, DAVID (PTL)	SR11004B	01/18/2011	01/07/2011
/	Type: CIT Desc: R&R #23 CONDUCT TOWARDS PUBLIC Statute: Dispo: U Date: 03/15/2011 Action:NONE Final Dispo: UNFOUNDED		Rule/Reg: R&R #23 Charge:	
944	STEED, DAVID (PTL)	IA11003	03/25/2011	03/15/2011
✓	Type: CIT Desc: R&R #5 - EXCESS FORCE Statute: Dispo: U Date: 06/10/2011 Action: Final Dispo: UNFOUNDED		Rule/Reg: R&R #5 Charge:	
944	STEED, DAVID (PTL)	SR11026	06/15/2011	06/11/2011
/	Type: CIT Desc: R&R #23 CONDUCT TOWARDS PUBLIC Statute: Dispo: N Date: 07/14/2011 Action: Final Dispo: NOT SUSTAINED		Rule/Reg: R&R #23 Charge:	
944	STEED, DAVID (PTL)	IA11009	08/11/2011	07/27/2011
/	Type: CIT Desc: R&R#5 OBED TO LAWS AND REGS (EXCESS FORCE) Statute: Dispo: E Date: 10/19/2011 Action: Final Dispo: EXONERATED		Rule/Reg: R&R#1 Charge:	
944	STEED, DAVID (PTL)	SR11053	10/10/2011	10/04/2011
/	Type: ADM Desc: R&R#1 DUTY RESP (FAILED TO ATTEND SCHEDULED TRAINING) Statute: Dispo: S Date: 10/24/2011 Action:WRITTEN REP Final Dispo: SUSTAINED		Rule/Reg: R&R#1 Charge:	

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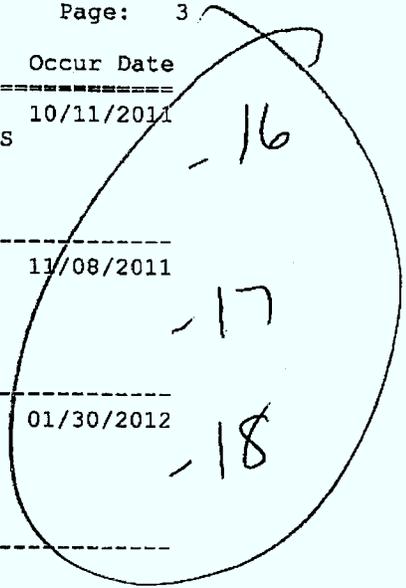
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Investigations By Employee

Report Date: 03/20/2012

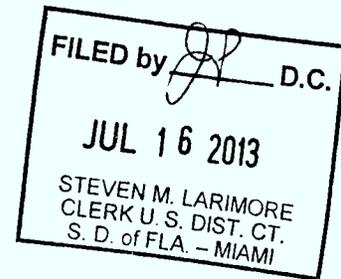
Page: 3

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
944	STEED, DAVID (PTL)	SR11056	10/13/2011	10/11/2011
	Type: ADM Desc: R&R#26 COMPLIANCE W/MOTOR VEHICLE LAWS & TRAFFIC REGS			
	Statute:		Rule/Reg: R&R#26	
	Dispo: S Date: 11/18/2011 Action:VERBAL REP		Charge:	
	Final Dispo: SUSTAINED			
944	STEED, DAVID (PTL)	SR11069	11/14/2011	11/08/2011
	Type: ADM Desc: R&R#1 DUTY RESP. (OFFICER SAFETY)			
	Statute:		Rule/Reg: R&R#1	
	Dispo: E Date: 12/13/2011 Action:EXONERATED		Charge:	
	Final Dispo: EXONERATED			
944	STEED, DAVID (PTL)	SR12008	01/31/2012	01/30/2012
	Type: ADM Desc: R&R#25 SUBPOENA			
	Statute:		Rule/Reg: R&R#25	
	Dispo: E Date: 02/16/2012 Action:EXONERATED		Charge:	
	Final Dispo: EXONERATED			



Investigations Printed - 19

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
CASE NO. 12:80648-CIV-MARRA  
MAGISTRATE JUDGE P.A. WHITE**



**ATHONY GEORGE EVANS,**  
Plaintiff,

Vs

**DAVID STEED, et. al.**  
Defendants.

---

**SECOND AMENDED REQUEST FOR ADMISSIONS**

Plaintiff, **ATHONY GEORGE EVANS**, requests pursuant to Federal R. Civ. P. 36, that you, **DAVID STEED**, before date within 30 days if the request is made on a party other than a defendant or, if request served on a defendant, make the following admissions for the purpose of this action only, and subject to all pertinent objections as to the admissibility of such admissions that may be interposed at the trial:

**1. Each of the following documents, copies of which are attached to this request, is genuine:**

**[description of each document].**

**a. Attached Computer docket print-out dated 3/20/2012 pertaining to DAVID STEED as "Exhibit 1" consisting of 18 dated incidents of sanctioned conduct from October 16th, 2006 to January 30th, 2012.**

Dated: 7-10-13

Anthony Evans

ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

**Enclosures**

- a. Attached Computer docket print-out dated 3/20/2012 pertaining to **DAVID STEED** as “**Exhibit 1**” consisting of 18 dated incidents from October 16th, 2006 to January 30th, 2012.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to

K Jackson, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street, Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol, Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray Beach, Florida 33344 and the Clerk of the Court, United States District Court for the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami, Florida 33128 this 10<sup>th</sup> day of May, 2013.

Anthony Evans

ANTHONY EVANS  
DC# 187491  
Lawtey CI  
7819 NW 228th Street  
Raiford, Florida 32026

LEGAL MAIL  
PROVIDED TO LAWTEY C.I.  
DATE 7-10-13 FOR MAILING.  
INITIALS AE

Investigations By Employee

Report Date: 03/20/2012

Page: 1

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
944	STEED, DAVID (CIV) Type: ADM Desc: COURT FTA Statute: Dispo: E Date: 11/20/2008 Action:NONE Final Dispo: EXONERATED	SR08084	10/16/2006	09/29/2008
			Rule/Reg: RR25 Charge:	-1
944	STEED, DAVID (CIV) Type: Desc: VEHICLE INSPECTION Statute: Dispo: E Date: 07/08/2007 Action:NONE Final Dispo: EXONERATED	SR07005	01/24/2007	01/21/2007
			Rule/Reg: RR1 Charge:	-2
944	STEED, DAVID (PTL) Type: ADM Desc: REPORT FAIL SUBMIT Statute: Dispo: S Date: 06/25/2007 Action:TRAINING Final Dispo: TRAINING	SR07046	05/16/2007	05/15/2007
			Rule/Reg: RR1 Charge:	-3
944	STEED, DAVID (CIV) Type: ADM Desc: ACCIDENT AT FAULT Statute: Dispo: S Date: 11/19/2009 Action:VRBL REP Final Dispo: VERBAL REPRIMAND	SR08081	10/09/2008	10/09/2008
			Rule/Reg: RR26 Charge:	-4
944	STEED, DAVID (CIV) Type: ADM Desc: COURT FTA Statute: Dispo: S Date: 11/24/2008 Action:LETTER REP Final Dispo: LETTER REPRIMAND	SR08085	10/16/2008	10/06/2008
			Rule/Reg: RR25 Charge:	-5
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #1 FAILURE TO REPORT Statute: Dispo: S Date: 05/01/2010 Action:WRITEN REP Final Dispo: SUSTAINED	SR09112B	12/29/2009	12/27/2009
			Rule/Reg: R & R #1 Charge:	-6
✓ 944	STEED, DAVID (PTL) Type: ADM Desc: FAILURE TO REPORT DAMAGE TO VEHICLE Statute: Dispo: N Date: 04/02/2010 Action:NONE Final Dispo: NOT SUSTAINED	SR10009	02/06/2010	02/02/2010
			Rule/Reg: R & R #1 Charge:	-7
✓ 944	STEED, DAVID (PTL) Type: CIT Desc: R & R #23 CONDUCT TOWARDS PUBLIC Statute: Dispo: N Date: 08/11/2010 Action:NONE Final Dispo: NON- SUSTAINED	SR10045	06/22/2010	06/17/2010
			Rule/Reg: R & R #23 Charge:	-8

ATTACHMENT/EXHIBIT

355-7565  
Kathy

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16, 17, 18  
narratives  
only

Investigations By Employee

Report Date: 03/20/2012

Page: 2

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
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944	STEED, DAVID (PTL)	IA10008	09/17/2010	09/13/2010
Type: CIT Desc: R&R #5 EXCESSIVE FORCE				
Statute:				
Dispo: E Date: 01/24/2011 Action:NONE			Rule/Reg: R & R #5	
Final Dispo: EXONERATED			Charge:	

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944	STEED, DAVID (PTL)	SR09112A	12/29/2010	12/27/2009
Type: CIT Desc: R & R #1 IMPROPER RADIO PROCEDURE				
Statute:				
Dispo: S Date: 05/01/2010 Action:VERBAL REP.			Rule/Reg: R & R #1	
Final Dispo: SUSTAINED			Charge:	

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944	STEED, DAVID (PTL)	SR11004A	01/18/2011	01/07/2011
Type: CIT Desc: R & R #4 ILLEGAL SEARCH				
Statute:				
Dispo: E Date: 03/15/2011 Action:NONE			Rule/Reg: R&R #4	
Final Dispo: EXONERATED			Charge:	

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944	STEED, DAVID (PTL)	SR11004B	01/18/2011	01/07/2011
Type: CIT Desc: R&R #23 CONDUCT TOWARDS PUBLIC				
Statute:				
Dispo: U Date: 03/15/2011 Action:NONE			Rule/Reg: R&R #23	
Final Dispo: UNFOUNDED			Charge:	

944	STEED, DAVID (PTL)	IA11003	03/25/2011	03/15/2011
Type: CIT Desc: R&R #5 - EXCESS FORCE				
Statute:				
Dispo: U Date: 06/10/2011 Action:			Rule/Reg: R&R #5	
Final Dispo: UNFOUNDED			Charge:	

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944	STEED, DAVID (PTL)	SR11026	06/15/2011	06/11/2011
Type: CIT Desc: R&R #23 CONDUCT TOWARDS PUBLIC				
Statute:				
Dispo: N Date: 07/14/2011 Action:			Rule/Reg: R&R #23	
Final Dispo: NOT SUSTAINED			Charge:	

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944	STEED, DAVID (PTL)	IA11009	08/11/2011	07/27/2011
Type: CIT Desc: R&R#5 OBED TO LAWS AND REGS (EXCESS FORCE)				
Statute:				
Dispo: E Date: 10/19/2011 Action:			Rule/Reg: R&R#1	
Final Dispo: EXONERATED			Charge:	

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944	STEED, DAVID (PTL)	SR11053	10/10/2011	10/04/2011
Type: ADM Desc: R&R#1 DUTY RESP (FAILED TO ATTEND SCHEDULED TRAINING)				
Statute:				
Dispo: S Date: 10/24/2011 Action:WRITTEN REP			Rule/Reg: R&R#1	
Final Dispo: SUSTAINED			Charge:	

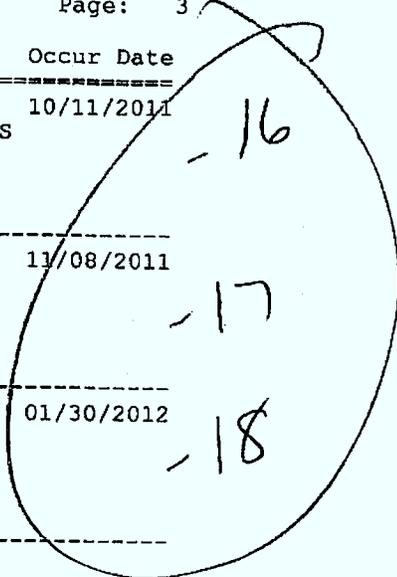
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Investigations By Employee

Report Date: 03/20/2012

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Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
944	STEED, DAVID (PTL)	SR11056	10/13/2011	10/11/2011
	Type: ADM Desc: R&R#26 COMPLIANCE W/MOTOR VEHICLE LAWS & TRAFFIC REGS			
	Statute:		Rule/Reg: R&R#26	
	Dispo: S Date: 11/18/2011 Action: VERBAL REF		Charge:	
	Final Dispo: SUSTAINED			
944	STEED, DAVID (PTL)	SR11069	11/14/2011	11/08/2011
	Type: ADM Desc: R&R#1 DUTY RESP. (OFFICER SAFETY)			
	Statute:		Rule/Reg: R&R#1	
	Dispo: E Date: 12/13/2011 Action: EXONERATED		Charge:	
	Final Dispo: EXONERATED			
944	STEED, DAVID (PTL)	SR12008	01/31/2012	01/30/2012
	Type: ADM Desc: R&R#25 SUBPOENA			
	Statute:		Rule/Reg: R&R#25	
	Dispo: E Date: 02/16/2012 Action: EXONERATED		Charge:	
	Final Dispo: EXONERATED			



Investigations Printed - 19

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL  
MOSCHETTE,

Defendants.

---

**DEFENDANTS' MOTION TO STRIKE THE PLAINTIFF'S  
NOTICE OF FILING IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the Defendants David Steed and Michael Moschette, and move this Court for an order striking the Plaintiff's Notice of Filing in Support of the Plaintiff's Motion for Summary Judgment and as grounds states follows:

1. The Plaintiff filed his verified Motion for Summary Judgment on May 6, 2013 (DE #34).
2. The Defendants filed their Response to the Plaintiff's Motion for Summary Judgment on May 22, 2013 with Reply due by June 3, 2013 (DE #40).
3. The Plaintiff filed his Answer to the Defendants' Response to the Plaintiff's Motion for Summary Judgment filed on May 31, 2013 entered June 6, 2013 (DE #44).
4. As the Plaintiff has replied to the Defendants' Response to the Plaintiff's Motion for Summary Judgment, this filing is an impermissible reply and should be struck by the Court or disregarded by the Court.

5. Local Rule 7.1 sets for the procedural rules governing motions. According to Rule 7.1, a party may file a motion; within fourteen days after service of a motion, a party opposing the motion may serve an opposing memorandum; and within seven days after service of an opposing memorandum, the movant may serve a reply memorandum. Rule 7.1 explicitly states “No further or additional memoranda of law shall be filed without prior leave of Court.”

Leave of Court was neither sought by Plaintiff or granted by the Court before Plaintiff filed this further and additional memoranda. Plaintiff’s Supplemental Response must be struck and disregarded by the Court. *See, e.g., Eckert v. U.S.*, 232 F.Supp.2d 1312 (S.D. Fla. 2002) (disregarding plaintiff’s “supplemental” responses as a “direct contravention of Local Rule 7.1(C); *Karlecke v. City of Delray Beach*, 09-80371-CIV, 2010 WL 399301 (S.D. Fla. January 28, 2010) (disregarding additional memoranda filed by plaintiff without prior leave of court).

WHEREFORE, the Defendants respectfully request this Court to strike the Plaintiff’s Notice of Filing in Support of the Plaintiff’s Motion for Summary Judgment.

Respectfully submitted this 22<sup>nd</sup> day of July, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol

Catherine M. Kozol, Esq. (831433)

Attorney email: [kozol@mydelraybeach.com](mailto:kozol@mydelraybeach.com)

Asst. City Attorney/Police Legal Advisor

300 W. Atlantic Avenue

Delray Beach, FL 33444

Telephone: 561-243-7823

Facsimile: 561-243-7815

and

Terrill C. Pyburn, Esq. (524646)

Attorney email: [pyburn@mydelraybeach.com](mailto:pyburn@mydelraybeach.com)

Assistant City Attorney

200 N. W. 1<sup>st</sup> Avenue

Delray Beach, FL 33444  
Telephone: 561-243-7090  
Facsimile: 561-278-4755

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: Anthony George Evans, 187491, Lawtey Correctional Institution, B21225, 7819 N.W. 228 Street, Raiford, FL 32026 on this 22<sup>nd</sup> day of July, 2013.

/s/ Catherine M. Kozol  
Catherine M. Kozol, Esq.